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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 PAMELA ERWIN,

6 Petitioner,

7 v.

8 STATE OF NEVADA,

9 Respondents.

Case No. 2:23-cv-00697-ART-NJK

ORDER

10  
11 Pamela Erwin, an individual incarcerated at Nevada’s Florence McClure  
12 Women’s Correctional Center, initiated this action, *pro se*, on May 4, 2023, by  
13 submitting a motion for extension of time (ECF No. 1-2), a motion for appointment  
14 of counsel (ECF No. 1-3), and a request for submission of motion (ECF No. 1-1).  
15 It appears from her filings that it is Erwin’s intention to file an application to  
16 proceed *in forma pauperis* and a petition for writ of habeas corpus pursuant to  
17 28 U.S.C. § 2254. She has not yet filed either.

18 It appears from publicly available orders of the Nevada Court of Appeals  
19 that Erwin was convicted of second-degree murder, upon a plea of no contest,  
20 and the Nevada Court of Appeals affirmed her conviction and sentence on  
21 December 14, 2016. *See Erwin v. State*, 2016 WL 7378708 (Nev. Ct. App.,  
22 December 14, 2016). Apparently, Erwin initiated a state habeas corpus action on  
23 June 13, 2016—before her conviction became final—and the Nevada Court of  
24 Appeals affirmed the denial of that petition on April 7, 2023. *See Erwin v. State*,  
25 2023 WL 2861158 (Nev. Ct. App., April 7, 2023). Erwin initiated this action, albeit  
26 without filing a habeas petition, on May 4, 2023.

27 In her motion for extension of time (ECF No. 1-2), Erwin asks for “an  
28 enlargement of time of 60 days,” to July 3, 2023, “to file Notice of Appeal,

1 Application to Proceed *in Forma Pauperis* and Petition for the Writ of Habeas  
2 Corpus 2254.”

3 To the extent Erwin means by her motion for extension of time to seek  
4 prospective equitable tolling of the one-year statute of limitations applicable to  
5 federal habeas petitions under 28 U.S.C. § 2244(d), the Court will deny her  
6 motion. It is unclear whether prospective equitable tolling of the statute of  
7 limitations is available (*see, e.g., Burns v. Shinn*, 2022 WL 1540091 (D.Ariz., May  
8 16, 2022) (discussing issue)), and, at any rate, Erwin makes no showing that  
9 equitable tolling is warranted.

10 The Court will, however, grant Erwin’s motion to the extent she simply  
11 requests that the Court hold this case open until she files her *in forma pauperis*  
12 application and her habeas petition. The Court will grant Erwin time to file those  
13 documents and will direct the Clerk of the Court to send Erwin the forms that  
14 she will need for both.

15 The Court does not mean by this order to make any comment upon, or to  
16 affect in any manner, the operation of the statute of limitations in this case.

17 The Court will deny the request for submission of motion (ECF No. 1-1) as  
18 unnecessary; a request for submission of motion is not necessary to bring a  
19 motion before this Court for resolution.

20 The Court will not act upon the motion for appointment of counsel until  
21 Erwin files her *in forma pauperis* application and habeas petition.

22 If Erwin fails to file an *in forma pauperis* application and habeas petition  
23 within the time allowed, this action will be dismissed.

24 It is therefore ordered that Petitioner’s motion for extension of time (ECF  
25 No. 1-2) is granted in part and denied in part, as is explained above.

26 It is further ordered that Petitioner’s request for submission of motion (ECF  
27 No. 1-1) is denied, as unnecessary.

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1 It is further ordered that Petitioner will have 90 days from the date of this  
2 order to file an application to proceed *in forma pauperis* and a petition for writ of  
3 habeas corpus pursuant to 28 U.S.C. § 2254.

4 It is further ordered that the Clerk of the Court is directed to send  
5 Petitioner:

- 6 - two copies of this order,
- 7 - two copies of the form for a state prisoner to apply to proceed  
8 *in forma pauperis* along with any available instructions  
regarding that form, and
- 9 - two copies of the form for a petition for writ of habeas  
10 corpus pursuant to 28 U.S.C. § 2254 along with any  
available instructions regarding that form.

11  
12 DATED THIS 8th day of May, 2023.

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15 ANNE R. TRAUM  
16 UNITED STATES DISTRICT JUDGE  
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